

Address and proposed draft. Const. 1837

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THE

**A D D R E S S ,**

AND DRAFT OF A

**PROPOSED CONSTITUTION,**

SUBMITTED TO

**THE PEOPLE OF THE STATE OF NEW-YORK,**

BY A

**Convention of Friends of Constitutional Reform.**

HELD AT UTICA, SEPTEMBER, 1837.

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NEW YORK :

PUBLISHED BY THE CONVENTION.

1837.

**OFFICERS OF THE CONVENTION.**

*President,*  
ROBERT TOWNSEND, Jr. of New York.

*Vice Presidents,*  
DAVID CANFIELD, of Genesee,  
HARRY BUSHNELL, of Oneida.

*Secretaries,*  
WILLIAM H. HALE, of Kings,  
ANDREW HANNA, of Oneida,  
DANIEL A. ROBERTSON, of Westchester.

# ADDRESS

OF THE

## Convention for promoting Constitutional Reform,

HELD AT UTICA, SEPTEMBER, 1837,

TO THE PEOPLE OF THE STATE OF NEW YORK.

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### FELLOW CITIZENS :

You constitute the sovereign power of the state. You are responsible—responsible before God and man—for the just exercise of that power. And if you permit it to be employed in outraging the rights of any portion of your fellow men, and in reducing thousands of industrious citizens, a vast portion of whom are defenceless women and children, to the condition of paupers and slaves, no individual among you can exonerate himself from the guilt, nor (if God be just) from its just punishment.

There never was a time when human law was so perfect that there was no room for improvement, or so just and upright that there was no public wrong to reform. The time has now arrived when reform is not merely desirable, but indispensable to our very existence; and we therefore hope that those who, in imitation of the Tory Lords of England, style themselves “conservatives,” and shout “*let well alone*,” will not induce you to let ill alone any longer.

There are a multitude of political and social abuses in our state, which cry aloud to you for reform, and to heaven for judgement—abuses which not only compel vast numbers of our fellow men to shorten their lives by excessive toil, but which destroy the virtues of the people, and render human life a mere swinish scramble to escape starvation.

At present, although we may live under the cloak of republicanism, we are in reality subject to the worst of all tyrannies—an aristocracy of wealth. Our actual government, our real regulator of social rights and social intercourse, is money—the greater heaps ruling the less. This indeed has generally been the essence of all governments, whatever might be their outward form. One of the best and ablest of Christian statesmen (Lord Chancellor Sir THOMAS MORE) declares, that all the governments he had either seen or known were little else than a conspiracy of greedy

men, first, to monopolize all the common gifts of God to man; and then, to get the labor of those whom they had thus wickedly made destitute and dependant at as low rates as possible, and oppress them as much as they please. Such was the nature of the soul-debasing tyranny from which our ancestors sought a refuge in this western wilderness, and which, owing to the influence of vicious training and dishonest habits, was allowed to take root here. For however great may be the extent of our *theoretical* freedom, the *practical* doctrine of our government has been, that every poor man's child surrenders, at its birth, all the rights it derives from nature and nature's God into the hands of the government, or of persons privileged by government to enjoy or sell them. Here, as in other aristocracies of wealth, man is made to derive his rights, not from the free bounty of his Creator, but from the formal scrawls of scribes and office holders; the mass of the people not being permitted by law to plant a seed or fruit tree even in the wilderness for their own sustenance, and are enabled to obtain food and shelter only by selling their personal endowments, for longer or shorter terms of service, to the highest bidder. For a long time after the formation of our state government, it was so completely an aristocracy of wealth that none but the possessors of a given amount of wealth (having at least the power to derive gain from the industry or necessities of the poor) were allowed any voice in its enactments; while the honest laborer who had been made landless by law, or houseless by oppression, was required to hazard his heart's blood in defence of the hand that deliberately stripped him of his natural rights and destroyed his social equality.

It should be borne in mind, however, that the original organizers of our state government, exhausted by a tedious war against British usurpation, did not profess to have framed such a system as they wished to see finally established; and that they merely constructed a temporary shelter

out of the least odious parts of the system they had warred against, leaving it to their descendants, when enlightened by study and refreshed by peace, to establish a social edifice based entirely on the immutable principles of equality and justice. Then, also, as now, the advocates of social reform were greatly retarded by those swinish spirits who had been used to look on other men's poverty as their opportunity; who knew no other good than gain, no other God than Mammon; who prided themselves upon the spoils of honest industry, and regarded property as the test of merit; who never let slip an opportunity to infuse a portion of their own meanness into our public institutions, and whose zeal in the service of Satan could hardly be checked even by the discipline of tar and feathers.

On the 4th of July, 1776, the delegates of the American people in congress assembled, solemnly declared the universal principle of man's equality of natural rights; and, appealing to the Supreme Judge of the universe, they as solemnly proclaimed the democratic principle of the sovereignty of the people. Subsequently, the constitutions of the general and state governments of the union have in their preambles, or in some article or provision, set forth the same immutable truths; and yet there is not one of those constitutions that does not contain some contravention of one or both of those eternally just principles. If men are equal in rights, and if the whole people are sovereign, why should not every branch of government emanate equally and directly from that sovereignty? Why should not the executive, the judicial, and senatorial officers of the general government be directly elected by the people? Why are not the judicial officers of the state governments elective by the people? Have they the right, and are they capable, of choosing fit men to *make* laws, and have they not the right, or are they incapable of choosing fit men to *expound* those laws and to *execute* them?

The great object of a constitution is, to prevent the officers of government from assuming powers incompatible with the natural rights of man; and it is certain that our present constitution does not accomplish this paramount design. If the powers of public agents under it are distinctly limited and clearly defined, why should their political principles be a matter of such solicitude at elections? If the constitution contains a plain guarantee of the rights of the people, whence the necessity of pledging legislators not to violate those rights? The plain truth is, that constitutions in these United States have been constructed in the spirit of

compromise—of compromise between the advocates of democracy and the friends of aristocracy—compromise between the principles of right and wrong.

It is time—the disastrous results of aristocratic legislation prove that it is high time—that our state constitution should define the powers and duties of legislators; and, above all other instruments, it should afford the clearest pledge, the safest guarantee of the rights of the people against legislative usurpation—against the creation of those vested wrongs, monopolies—and against the fostering of a system of artificial credit, calculated to sap all public and private morals, not only placing the advantages of credit within reach of the dishonest, but enabling hordes of promise-printers and speculators to engross all the provisions and goods produced by the industry of the people, and then deal them out at prices limited only by the fear of popular vengeance.

Fellow citizens, it is for you to reflect on these important subjects. The framers of the subjoined constitution have already done so, and they have recurred to first principles—to the principles of our revolutionary fathers—in framing a constitution to protect the equal rights of the citizen, and to maintain the sovereignty of the people. It is very probable that it may be the subject of virulent attack, of tortuous construction, or feigned contempt, on the part of those who fawn on injustice for a share of its plunder, because it does not emanate from those classes which have heretofore swayed our destinies. No leading politicians, no lawyers or professional gentlemen of any kind, have been consulted or employed in constructing it. It is the work of working men—of unambitious, humble men—who have long been compelled to feel most bitterly the cruel oppressions of the system founded and upheld by the aristocracy of wealth and its mental prostitutes, and whose only object is the advancement of moral, social and political right.

With these sacred objects in view, the proposed constitution herewith published, is respectfully submitted to the consideration of the people, in the hope that it may receive their careful scrutiny, and eventually be submitted by them to the revision of a larger and abler convention. If it should be the means of exciting examination and discussion, and of eventually producing that desirable and certainly attainable good to mankind, a perfect democratic constitution, the object of the framers of this draft will be fully accomplished.

By order of the convention,

ROBERT TOWNSEND, Jr. *Pres.*



# PROPOSED CONSTITUTION

## FOR THE

# STATE OF NEW YORK.

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Designed to define and protect the equal rights of the people, and to furnish a safeguard against the creation and continuance of monopolies or exclusive privileges.

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### ARTICLE I.—*Natural Rights.*

§ 1. WE, the People of the State of New-York, in order to mutually secure to each other the peaceful enjoyment of our natural rights, and the equal participation of the advantages of society, do hereby establish the following Constitution, as our social compact and system of government.

§ 2. All men are created equally free, and are equally entitled to the exercise of their natural rights. On entering into society, man gives up none of those rights; he only adopts certain modes of securing the peaceful enjoyment of them.

Man's natural rights of person are, his right to exist, and to enjoy his existence; and the right to exercise those physical and mental faculties with which nature has endowed him. Man's natural rights in relation to things are, his right to the things produced by the exercise of his personal endowments, and his right to participate in those bounties which nature has equally given to all. Right, as relates to actions, is that principle of equality which teaches man to do to others as he would that others should do to him. Those acts are naturally, politically and morally right, which may be done by all without injury to any.

### ARTICLE II.—*Government.*

§ 1. Government is but an agent to exercise such powers as are expressly delegated to it by the people.

§ 2. The government of this state shall consist of three distinct departments, namely, the Legislative, Judicial, and Executive; the members of which departments shall be directly elected by the people.

§ 3. All elections shall be by ballot, each citizen of twenty-one years of age or upwards, who shall be an actual resident of the place where he may

offer his vote, having equal suffrage. General elections shall be held on the first Tuesday in the November of each year, and those persons having a majority shall be considered duly elected. In case of there being no choice, a new election shall be called by the secretary of state ; except in the case of district, city, village, or town officers, when the election shall be called by the canvassers of such district or place. The existing laws relative to the manner of notifying and conducting elections, canvassing votes, and making returns, shall continue in force, so far as they may be compatible with this constitution, until altered by the legislature.

§ 4. The political year shall begin on the first of January in every year. The legislature shall meet on the first Tuesday of January in every year.

### ARTICLE III.—*Legislative Department.*

§ 1. The legislative or law-making power shall be exercised by two branches of delegates, a Senate and House of Assembly.

§ 2. The legislature shall from time to time divide the state into as many congressional districts as it sends members to congress ; each of which shall, besides electing one representative to congress, also elect one member to the Senate of the state. It shall also subdivide each congressional district into four Assembly Districts, each of which shall elect one delegate to the House of Assembly.

§ 3. Each member of the Senate and of the House of Assembly shall hold office for one year.

§ 4. A majority of the members elect in each house, shall constitute a quorum to do business, and shall also be necessary to the passage of any law. Each house shall choose its own officers ; and the Senate shall choose a temporary president, when the lieutenant governor shall not attend as president, or shall act as governor.

§ 5. The legislature shall pass only general and equal laws, declaring the duties and reciprocities of the community and its members to each other respectively ; protecting individuals in the enjoyment of their natural rights of person and of property, prohibiting aggressions on them, and specifying the redress for all aggressions and the mode of obtaining it.

§ 6. The legislature shall not charter or create any corporate or artificial body, nor confer on any individual or company either exclusive advantages or special privileges.

§ 7. The legislature shall not borrow money or contract loans in the name of the people : but it may submit bills authorizing public loans to the people, which bills shall become binding when ratified by a majority of the voters at a general election.

§ 8. The legislature in session has power to alter, amend, or repeal any act, law, or proceeding of any former session.

§ 9. Neither the legislature nor either branch of it shall ever exercise judicial or executive powers, except over its own members while in session.

§ 10. Any bill may originate in either house, and all bills passed in one house may be altered or amended by the other, each house having a negative on any alteration or amendment of the other.

§ 11. Each member of the legislature shall receive for his services a compensation of three dollars a day from the public treasury, but shall not receive pay for time when absent. No member shall receive any civil appointment during the term for which he shall have been elected.

§ 12. No person, being a member of congress, or holding any office under the federal government, shall hold a seat in the legislature. If any member of the legislature be elected to congress, or appointed to any office by the federal government, his acceptance thereof shall vacate his seat.

§ 13. Every bill passed by the legislature shall, before it become a law, be presented to the Governor. If he approve, he shall sign it; if not, he shall return it to that house in which it originated, with his objections to the bill. The said house shall enter at large on their journal his objections, and proceed to reconsider it. If, after such reconsideration, two thirds of the whole number of members elected shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two thirds of the whole number of members elected, it shall become a law of the state. But, in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it; unless the legislature shall, by their adjournment, prevent its return, in which case it shall not be a law.

§ 14. Each house shall keep a regular journal of its proceedings, and the doors of each house shall be kept open. Neither house shall, without the consent of the other, adjourn for a longer time than two days.

#### ARTICLE IV.—*Judicial Department.*

§ 1. Each Congressional District of this state shall elect one Judge, at a general election. Each Judge so chosen shall hold office for four years, and be eligible to re-election.

§ 2. The state shall be divided into eight Judicial Circuits by the legislature. The Judges of each Circuit shall, by mutual arrangement, preside in turn in the several District Courts of their Circuit, and, as nearly as practicable, in regular rotation.

§ 3. The district courts wherein these Judges preside, shall have criminal and civil jurisdiction in all cases, either in law or equity; and shall also be courts of appeal from the decisions of the courts of justices of the peace. They shall have power, except in criminal cases, to examine the parties to any suit, when required by either of the parties. The times and places of their sittings shall be regulated by law.

§ 4. It shall be the duty of the aforesaid Judges to assemble on the first Tuesday of December in each year, in the city of Utica, and on the first Tuesday of June in each year, in the city of New York, to constitute a high Court of Appeals, which shall hold its session in each place until the docket of cases is gone through.

§ 5. When thus assembled, they shall elect, by ballot, from the Judges present, a President of the Court of Appeals, to preside in said court.—Juries of twelve men each shall then be drawn from the Judges present. These juries shall sit by alternation, or as cases may require, in the jury box, hear cases, retire, and bring in their verdicts, in like manner as other juries.

§ 6. This Court of Appeals shall have jurisdiction in all civil and criminal cases of appeal, either in law or equity. It shall also try all cases of impeachment of any public officer for malpractice in office, when impeached by the executive or either branch of the legislature.

§ 7. This court shall have power to examine the parties to any civil suit, and to send for and examine witnesses when there is any ambiguity in the minutes of evidence from the court below. It shall have power to order, admit or reject evidence by commission or affidavit. Its decisions shall be final in all cases; but no party shall be debarred from petitioning the legislature for relief.

§ 8. No court of law or justice shall hereafter practise judicial legislation, by adopting or admitting the laws, precedents, decisions, or legal authorities of other nations or states into the jurisprudence or courts of this state. When our own laws provide no special act or provision for a case, the jury shall determine according to the principles of natural right and justice.

§ 9. In all criminal cases, a verdict must be unanimous; but in all civil cases, a verdict signed by two thirds of the jury shall be valid.

§ 10. When a jury shall agree on a verdict against the accused in any cri-

iminal prosecution, it shall also specify the measure of punishment. In civil cases, it shall also determine the amount of its verdict; but in all cases where the jury cannot agree on the measure of punishment, or on the amount to be awarded, the Judge shall decide the matter.

§ 11. Justices of the Peace shall be elected by the people of the several cities, towns, and villages, at their local elections.

§ 12. No court shall tax either party to any suit with fees of office or costs of court; but damages may be recovered against any person bringing any idle or vexatious suit.

§ 13. Those juries commonly called grand and petty juries, shall be taken by lot from the rolls of the inspectors of election. The defendants in either criminal or civil cases shall have equally the right of challenging jurors, and to the same extent. Jurors shall receive, from the public or county treasury, a daily compensation, to be fixed by law, for their services.

#### ARTICLE V.—*Executive Department.*

§ 1. The duties of the executive department of government shall be exercised by a Governor, who shall hold his office for two years; and a Lieutenant-Governor shall be chosen at the same time, and for the same term.

§ 2. The Governor shall have power to convene the legislature on extraordinary occasions. He shall communicate by message to the legislature, at every session, the condition of the state, and recommend to them such measures as he shall judge expedient. He shall transact all necessary business with the officers of government, civil and military. He shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed. He shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the term for which he shall have been elected.

§ 3. The Governor shall be commander in chief of all the militia, and of the navy of the state. He shall nominate, and, with the consent of the senate, appoint, all major generals, brigade inspectors, and chiefs of the staff departments; but the adjutant general shall be appointed by him alone. All other military or naval officers of the state shall be elected or appointed as the legislature may direct.

§ 4. In case of the impeachment of the governor, or his removal from office, death, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the governor absent or impeached shall return, or be acquitted. But when the governor shall, with the consent of the legislature,

be out of the state in time of war, at the head of a military force thereof, he shall still continue commander-in-chief of all the military force of the state.

§ 5. The lieutenant-governor shall be president of the senate, but shall have only a casting vote therein. If, during a vacancy of the office of governor, the lieutenant-governor shall be impeached, displaced, resign, die, or be absent from the state, the president of the senate shall act as governor, until the vacancy shall be filled, or the disability shall cease.

#### ARTICLE VI.—*Other Civil Officers.*

§ 1. The Secretary of State, Comptroller, Treasurer, Attorney General, Surveyor General, Commissary General, and Canal Commissioners, shall be annually appointed by the senate and assembly, by joint ballot.

§ 2. Surrogates, public administrators, sheriffs, district clerks, registers, and coroners, shall be elected by the people of the various districts annually, and as often as vacancies shall happen. The Governor may impeach and suspend any subordinate officer for any defalcation of duty; but he must previously furnish such officer with a copy of the charges against him, supported by affidavit. In cases of suspension or impeachment, he shall, when necessary, appoint incumbents for the interval, or until an election shall take place.

§ 3. The mayor and common council of each city in this state shall be annually elected by the people of such cities. Supervisors, town clerks, collectors, assessors, constables, overseers of the poor, commissioners of highways, commissioners and inspectors of common schools, shall be annually elected by the people of the respective towns or districts.

§ 4. District treasurers shall be appointed annually by the supervisors. District attorneys and clerks of court shall be appointed annually by the district judges.

§ 5. Defalcations of duty or of trust on the part of any public officer, shall be indictable and punishable as felonies.

§ 6. The legislature may, from time to time, prescribe and define the duties of all town, county and municipal officers, by law.

§ 7. All public officers of this state, excepting such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, subscribe to the following obligation:—I do solemnly promise and pledge myself, that I will support and conform to the constitution of this state, and the constitution of the United States, and that I will faithfully discharge and perform the duties of the office of according to the best of my ability.

§ 8. When any vacancy shall occur in the legislative or judicial departments of government, by death or otherwise, the secretary of state shall order a special election; and the person elected to supply such vacancy shall hold office only until the expiration of his predecessor's term; but the governor shall have power to fill vacancies in other civil or military offices until the ensuing general election.

#### ARTICLE VII.—*Rights and Prohibitions.*

§ 1. Every profession, business or trade, not hurtful to the community, shall be equally open to the pursuit of every member of the community, without charter, license, impediment or prohibition. No exclusive privilege or monopoly shall be granted.

§ 2. No exemption laws shall be passed or remain in force, exempting any person, class, order, kind or description of persons or property, from any public duty, tax or burden, to which the rest of the community is subject.

§ 3. The people themselves being the proper and natural defence of free government, their right to bear and keep arms and munitions of war shall never be restricted or denied. But there shall be no standing army, and the military shall be subordinate to the civil power. The right of the people or any portion of them, to assemble for the discussion or consideration of grievances, shall not be restricted or prohibited; and there shall be no military or police array for the purpose of intimidation.

§ 4. The right of personal liberty is sacred; and no man shall be arrested or imprisoned except for crime, or when there is strong probability of his criminality supported by affidavit. Prisoners, except for murder, shall be bailable without delay; and in the event of being strangers, or in circumstances of poverty, so that they cannot procure bail, they shall have the right to demand immediate trial or liberation, and to be immediately tried or liberated. In all criminal prosecutions, the accused hath the right to be informed of the accusation against him, to have a copy of the indictment or charge in due time to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have compulsory process for witnesses in his behalf; to examine witnesses for and against him; to a speedy trial by an impartial jury, without whose unanimous consent he shall be deemed innocent; and no man, in any criminal case, shall be compelled to give evidence against himself.

§ 5. No warrants of search or seizure of person or property shall be issued without the cause of the same be set forth, supported by testimony and probable cause, with a special designation of the person or object of search or seizure.

§ 6. There shall be no capital punishments ; but in all convictions for murder or unjustifiable homicide, the sentence shall be banishment or imprisonment at hard labor for life ; the nett profits of said labor to be given to the dependants and relations of the person murdered, or to the poor, as the jury shall direct.

§ 7. All felonies shall be punished with confinement at hard labor ; the term of imprisonment and labor, as to the greatest and least amount for the different kinds of offences, to be specified by the legislature. But restitution shall be made to the parties injured, from the property or the proceeds of the labor of the convict ; the precise amount of punishment and restitution to be fixed by the jury.

§ 8. The time or labor of convicts shall not be bargained to contractors, or to any person whatsoever. All articles manufactured in the prisons of this state, over and above the consumption of the convicts, and over and above the purposes of restitution, shall be appropriated to the use of the poor in such manner as the legislature shall direct.

§ 9. Embezzlement of property by carriers, or persons taking goods on freightage, and all breaches of trust by persons receiving money or property for safe keeping and restoration to the owner, his agent, or assignee, shall be indictable as frauds ; and all frauds shall be punishable as felonies.

§ 10. No law shall be valid for the forcible collection of debts arising from voluntary agreement between individuals, wherein one party relinquishes his right to and possession of any species of property on the promise by the other party of another thing or equivalent. [This section shall apply only to debts contracted after the adoption of this constitution.]

§ 11. No law having a retrospective operation shall be valid.

§ 12. Every person may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of that right ; but to speak, to write, or to publish the truth, shall never be construed into an abuse of the right.

§ 13. The right to trial by jury shall ever be held sacred in all courts, and by all public authorities.

§ 14. As the intelligence and virtue of the people constitute the basis of social freedom, it shall ever be the special duty of the legislature to facilitate, by every judicious means, the extension of the blessings of virtuous education ; and to cause the youth of the state to be well instructed in the knowledge of their rights and duties, and in the arts of obtaining an honest livelihood. It shall be their duty to render our system of law a fit standard of public morality, to rid it of all redundancies and all foreign phrases, and to make it intelligible to all the people.









